

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ELIZABETH VAN DUYNE, *et al.*,

Plaintiffs,

v.

CENTERS FOR DISEASE CONTROL
AND PREVENTION, *et al.*,

Defendants.

Civil Action No. 4:22-cv-00122-O

DEFENDANTS' RESPONSE TO THE COURT'S MAY 13, 2022 ORDER

Defendants respectfully submit this response to the Court's May 13, 2022 Order, ECF No.

36. The Order states:

On April 13, 2022, the Transportation Security Agency ("TSA") extended the public transportation mask mandate through May 3, 2022. The TSA has not renewed the mask mandate. In light of the expiration of the mask mandate, the Court ORDERS the parties to file briefs addressing (1) whether the case is moot; (2) whether Plaintiffs suffer an injury in fact; and (3) whether Plaintiffs suffer irreparable harm.

Beginning in 2021, TSA issued a series of Security Directives, through which it assisted with the enforcement of the transportation masking order issued by the U.S. Centers for Disease Control and Prevention ("CDC"). *See generally* Defs.' P.I. Opp., ECF No. 13, at 8 n.1. As the Court notes, on April 13, TSA announced that it would extend the Security Directives through May 3. A district court vacated the CDC's transportation masking order on April 18. *Health Freedom Def. Fund, Inc. v. Biden*, No. 21-cv-1693, --- F. Supp. 3d ---, 2022 WL 1134138 (M.D. Fla. Apr. 18, 2022), *appeal docketed*, No. 22-11287 (11th Cir. Apr. 21, 2022). As a result, since the afternoon of April 18, the federal government has not required anyone to wear masks on public transportation conveyances or at public transportation hubs. CDC and TSA both promptly issued public statements to that effect.¹

¹ CDC, *Order: Wearing of face masks while on conveyances and at transportation hubs* (Apr. 18, 2022), <https://perma.cc/4FPS-EP8V> ("As a result of a court order, effective immediately and as of April 18,

No plaintiff in this case is suffering an injury-in-fact due to the TSA Security Directives or the CDC transportation masking order (Question 2). Plaintiffs did not name TSA or DHS as defendants in this action. The CDC order has been vacated, the TSA directives have lapsed, and neither agency is requiring masks to be worn on public transportation, so absent state or local policies or guidelines issued by private companies, plaintiffs are free not to wear a mask while taking public transportation. For much the same reasons, there is no irreparable harm to Plaintiff Van Duyne at this juncture either (Question 3)—if, indeed, she ever could have plausibly claimed irreparable harm as a result of the masking order. *See* Defs.’ Resp. to Apr. 18 Order, ECF No. 32, at 1–4; P.I. Opp’n at 9–16; *see also Andreidakis v. CDC*, No. 3:22-cv-52, 2022 WL 1204771, at *6 (E.D. Va. Apr. 22, 2022) (“The vacatur of the Mask Order by the United States District Court for the Middle District of Florida renders Plaintiff incapable of claiming any harm from the ongoing enforcement of the Mask Order”). Plaintiff Texas, which did not move for preliminary relief, has never asserted that the masking order caused it irreparable harm.

Although Defendants have appealed the *Health Freedom* decision, they have not sought a stay pending appeal, so there is no imminent likelihood of CDC reimposing the masking requirement. So even though, at this juncture, Defendants do not contend that this case is moot (Question 1), it is clear that Plaintiff Van Duyne’s request for emergency relief, ECF No. 3—the only motion presently before the Court—is moot. *See Seklecki v. CDC*, 1:22-cv-10155, ECF No. 136 at 1 (D. Mass. Apr. 26, 2022) (order denying preliminary injunction motion) & Hr’g Tr. at 5:24–6:18 (Apr. 26, 2022) (attached as Ex. A) (“[I]here’s no irreparable harm after the ruling of the judge in the Middle District of Florida, which I understand is being appealed, but right now there is no mask mandate, so I think this is moot. . . . I deny the motion for preliminary injunction . . .”).

Accordingly, the Court should hold Plaintiff Van Duyne’s motion for a preliminary injunction

2022, CDC’s January 29, 2021 Order requiring masks on public transportation conveyances and at transportation hubs is no longer in effect. Therefore, CDC will not enforce the Order.”); TSA, *Statement regarding face mask use on public transportation* (Apr. 18, 2022), <https://perma.cc/NTJ2-MSNL> (“Due to today’s court ruling, effective immediately, TSA will no longer enforce its Security Directives and Emergency Amendment requiring mask use on public transportation and transportation hubs. TSA will also rescind the new Security Directives that were scheduled to take effect tomorrow.”).

in abeyance, pending further proceedings in the *Health Freedom* case, or deny it. Should the government ultimately obtain *relief* from the *Health Freedom* order, and should a mask-wearing requirement remain necessary at that time, Plaintiff Van Duyne can request further relief (at which point, if necessary, the Court will already have the benefit of the parties' existing briefs about the propriety of entering a preliminary injunction).

Dated: May 19, 2022

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

CHAD E. MEACHAM
Acting United States Attorney

ERIC B. BECKENHAUER
Assistant Branch Director

By: /s/ Michael J. Gerardi
STEPHEN M. PEZZI
MICHAEL J. GERARDI (D.C. Bar. No.
1017949)
ANDREW F. FREIDAH
JOHNNY H. WALKER
Trial Attorneys
United States Department of Justice
Civil Division
Federal Programs Branch
1100 L Street NW
Washington, DC 20005
Telephone: 202-616-0680
E-mail: michael.j.gerardi@usdoj.gov

Counsel for Defendants